

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hillary Packer	Team: Team # 6	CCRB Case #: 200604558	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 03/19/2006 3:00 AM	Location of Incident: Rivington Street between Delancey and Essex Streets.	Precinct: 07	18 Mo. SOL 9/19/2007	EO SOL 9/19/2007	
Date/Time CV Reported Sun, 04/09/2006 4:26 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 04/09/2006 4:26 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Benjamin Cui	26367	932505	007 PCT
2. POM Steven Hong	00387	932800	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Benjamin Cui	Discourtesy: PO Benjamin Cui spoke rudely to § 87(2)(b)	
B.POM Benjamin Cui	Force: PO Benjamin Cui used physical force against § 87(2)(b)	
C.POM Steven Hong	Force: PO Steven Hong used physical force against § 87(2)(b)	

### Synopsis

On April 9, 2006, § 87(2)(b) a § 87(2)(b) year old white male, called in the following complaint to the CCRB. On March 19, 2006, on Rivington Street between Delancey and Essex Streets, in Manhattan, at approximately 3:30 AM, § 87(2)(b) was arrested for committing a graffiti offense. He alleged that while effecting his arrest, PO Benjamin Cui spoke discourteously to him and that PO Cui and PO Steven Hong used excessive force against him, Allegations A, B and C.

§ 87(2)(g)

### Summary of Complaint

On April 14, 2006, § 87(2)(b) was interviewed at the CCRB, (enc. 6-6d). § 87(2)(g) On March 19, 2006, at approximately 3:00 AM, § 87(2)(b) left a bar, located on Ludlow Street with his friend, § 87(2)(b). The two had been at the bar for approximately three hours, during which time § 87(2)(b) consumed three cocktails; he was slightly buzzed but not intoxicated. He and § 87(2)(b) stopped on the corner of Rivington Street and the street § 87(2)(b) identified as one block south of Houston Street. His friend went into a phone booth on the northwest corner to make a phone call. § 87(2)(b) told his friend that he was going to walk down the street and draw on the wall with a marker.

§ 87(2)(b) walked southbound on Rivington Street and stopped, three quarters of the way down and on the East Side of the street. He noticed a man, identified by the investigation as PO Benjamin Cui, approximately twenty yards away at the southeast corner of the block. § 87(2)(b) drew something on a doorway, then felt someone grab his jacket by his right shoulder. He spun to his left and pushed PO Cui in his chest with his left hand, causing him to take a step back. PO Cui said, "Police! Ok, police!" § 87(2)(b) looked for PO Cui's badge but didn't see one and thought PO Cui was a civilian calling for the police. He pushed PO Cui again in the chest with open hands. PO Cui repeated, "Police, ok, police!" § 87(2)(b) stepped forward and PO Cui grabbed him and they begun grappling, holding each other by the arms. PO Cui said, "Ok, you wanna fuck around with me, ok." Later, as he recounted this, § 87(2)(b) claimed PO Cui said, "You wanna fuck around with me, motherfucker." PO Cui punched § 87(2)(b) in his left cheek and ear with his right fist. § 87(2)(b) tried to run, but PO Cui grabbed a hold of him and they continued wrestling. They moved into the street, at which point, another officer, determined by the investigation to be PO Steven Hong, tackled § 87(2)(b) on his left side, so that § 87(2)(b) fell to the ground, landing on his right side. § 87(2)(b) may have blacked out at this point but he was not sure.

§ 87(2)(b) felt his right arm being pulled behind his back and up towards his head by, he believed PO Hong. PO Hong spoke with an American accent and § 87(2)(b) believed that he heard PO Cui's Asian accent coming from above him and the American-sounding voice from behind. § 87(2)(b) screamed. As he was being handcuffed by PO Hong, PO Cui kicked § 87(2)(b) in his left rib, hip and leg, one time each. PO Cui lifted § 87(2)(b) and walked him to the doorway he had been writing on and asked him what he had written on the wall. § 87(2)(b) responded that he didn't know what PO Cui was talking about and said he didn't write anything. PO Cui told him he'd written something on the wall and § 87(2)(b) didn't respond. PO Cui placed § 87(2)(b) inside a yellow taxicab and sat in the backseat next to him. PO Cui asked § 87(2)(b) why he had run, to which he answered that he didn't know that PO Cui was a police officer, it was the middle of the night and he was in Chinatown. PO Cui asked him what kind of Chinese person would grab him in the middle of the night. § 87(2)(b) explained to him that he doesn't discriminate against any kind of person, and believes that anybody of any race has the potential to be crazy.

§ 87(2)(b) did not seek medical attention at first, as he believed his arm was merely bruised and that it would heal with time. However, after a couple of weeks passed, his condition did not improve and on § 87(2)(b) he visited § 87(2)(b) and was diagnosed with a fractured elbow.

### **Results of Investigation**

#### **Witness**

§ 87(2)(b)

On May 2, 2006, § 87(2)(b) a § 87(2)(b)-year-old white male, was interviewed at the CCRB, (enc. 7-7d). On March 19, 2006, § 87(2)(b) went to a club located on Ludlow Street, with his friend, § 87(2)(b). They were at the club for approximately three hours, in which time, § 87(2)(b) consumed between three to five drinks. Both males were buzzed, but not intoxicated. They walked to Rivington Street to smoke a cigarette. Then, § 87(2)(b) told § 87(2)(b) that he was going to walk down the block. § 87(2)(b) called a friend from his cell phone, as he waited for § 87(2)(b).

§ 87(2)(b) hung up the phone, heard a commotion and turned around. He heard someone say, "Stop." From about twenty feet away, § 87(2)(b) saw § 87(2)(b) and an Asian male, holding each other by the shoulders and pushing each other; he thought the man was a civilian. He then heard the Asian man say in a heavy Asian accent, "I'm a cop," once or twice. He saw the two men move into the street, at which point, something, (either the phone booth or parked cars) obscured his vision. He saw another man running quickly, southbound on Rivington Street on the east sidewalk and then into the street after the other two. Once the second officer ran into the street, § 87(2)(b) lost sight of him too and left the area.

#### **Officers**

*PO Benjamin Cui-Asian male, 5'8", 170 lbs., black hair, brown hair, § 87(2)(b) old.*

On March 19, 2006, PO Cui completed an arrest and a complaint report both stating that at 3:28 AM, in front of 118 Orchard Street, § 87(2)(b) was arrested for graffiti that he drew at multiple locations, using "23 Fuel" as his tag, (enc. 10-10a and 8-8a, respectively). The damage caused by § 87(2)(b) amounted to more than two hundred and fifty dollars. During the apprehension, § 87(2)(b) pushed PO Cui's hands away to prevent being handcuffed. § 87(2)(b) apologized and stated he was drunk. § 87(2)(b) was charged with § 87(2)(a) 160.50 § 87(2)(b). PO Cui also completed a stop and frisk report, indicating that force was used against § 87(2)(b) and that he was brought to the ground, (enc. 9).

On February 6, 2007, PO Benjamin Cui was interviewed at the CCRB, (enc. 16-16a). On March 19, 2006, PO Cui was assigned to quality of life crimes. He began his tour at 5:30 PM with PO Mathers and at 1:00 AM, he began working with PO Steven Hong, ending his tour at 4:05 AM. He was dressed in plainclothes and assigned to an unmarked yellow cab. PO Cui's memo book indicates that at 3:28 AM, he arrested an individual for § 87(2)(b) (enc. 15-15b).

On March 19, 2006, PO Cui and PO Hong were driving north on Orchard Street, from Delancey to Rivington Streets. There are street lamps on the block and he could see fairly well. There was no vehicular or pedestrian traffic on the street. They observed § 87(2)(b) walking on the East Side of the street and stopping at each door; PO Cui initially believed that § 87(2)(b) was trying to break in to each apartment. He exited the vehicle and PO Hong went to park the car. As PO Cui followed § 87(2)(b) down Orchard Street, he removed his shield from underneath his shirt. Upon observing § 87(2)(b) PO Cui realized that he was drawing on each of the doors. When § 87(2)(b) reached the end of Rivington Street, he turned around, at which point PO Cui placed his right hand on § 87(2)(b)'s right upper shoulder and said, "NYPD. Do not move." Immediately, § 87(2)(b) swung his arm away and tried to run; he did not strike PO Cui. PO Cui grabbed § 87(2)(b)'s chest with his left arm and pushed him against the wall, which was less than a foot away. § 87(2)(b) turned southbound, and tried to run again; they began struggling and soon after PO Hong arrived. PO Hong pushed § 87(2)(b) against the wall again, his right shoulder landing on the wall. PO Hong repeatedly told § 87(2)(b)

§ 87(2)(b) to stop resisting. The struggle lasted for a few seconds longer as § 87(2)(b) continued to try to push the officers away with his hands, which he was unable to do. Both officers pushed § 87(2)(b) down on the ground and he landed facedown. PO Cui could not detail how he and PO Hong brought him to the ground. Once on the ground, § 87(2)(b) continued to resist by refusing to give the officers his arms to be handcuffed; PO Cui could not recall specifically what he was doing with his arms. PO Cui handcuffed § 87(2)(b) with the aid of PO Hong; he believed that PO Hong had § 87(2)(b)'s left arm and that he grabbed on to his right. PO Cui did not pull § 87(2)(b)'s elbow any further than it was necessary in order to handcuff him. Immediately, the officers lifted § 87(2)(b) off of the ground and walked him to the vehicle and transported him to the precinct. PO Cui did not say, "Wanna fuck with me, motherfucker?" He did not kick § 87(2)(b) at any point. § 87(2)(b) never complained of pain or appear to be injured. When PO Cui asked § 87(2)(b) at the precinct if he needed medical treatment, he answered that he did not. PO Cui could not explain how § 87(2)(b) suffered a fractured elbow; he might have been injured when pushed against the wall or when he was brought to the ground.

*PO Michael Hong-Asian male, 6'1", 170 lbs., black hair, brown eyes, § 87(2)(b) old.*

On February 6, 2007, PO Steven Hong was interviewed at the CCRB, (enc. 18-18a). On March 18 through March 19, 2006, PO Hong worked from 5:30 PM to 2:05 AM. PO Hong was dressed in plainclothes and assigned to an unmarked vehicle, which was either an Impala or a yellow cab, he could not recall. He was assigned to Anti-Crime and worked with PO Cui. He was the operator of the vehicle. His memo book indicates that at 3:28 AM, an individual was arrested for graffiti, (enc. 17-17a).

PO Hong's statement was substantively consistent with PO Cui's.

#### **Medical Records**

Medical Records obtained from the N § 87(2)(b) indicate the following. On § 87(2)(b), § 87(2)(b) visited the hospital, complaining of limited mobility and pain to his right elbow. He stated that the pain began when, upon being tackled by police officer, he fell to the ground. It was found that § 87(2)(b) suffered from a nondisplaced corner fracture of the coronoid process, (enc. 27-27t).

#### **Police Records**

The roll call obtained from the 7<sup>th</sup> Precinct indicates that PO Cui was assigned to the task force and was working alone, (enc. 26-26e).

The voucher completed by PO Cui for § 87(2)(b)'s arrest included a black permanent marker and pictures of the graffiti drawn by § 87(2)(b) (enc. 14).

#### **Officer CCRB History**

PO Cui and PO Hong do not have any substantiated allegations on their CCRB records, (enc. 2 and 3).

#### **Complainant CCRB History**

This is § 87(2)(b)'s first CCRB complaint, (enc. 4).

#### **Complainant Criminal Conviction History**

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Conclusions and Recommendations**

#### **Police Identification**

§ 87(2)(b) described "PO 1" as an Asian male, 5'8" tall, twenty-seven years old, stocky with an Asian accent and "PO 2" as an Asian male, American accent, 6' tall, in his late 20s. § 87(2)(g)

### Undisputed Issues

On March 19, 2006, at approximately 3:00 AM, § 87(2)(b) was writing graffiti on Rivington Street when he was observed by PO Cui and PO Hong. PO Cui exited the vehicle and followed § 87(2)(b) approximately twenty feet behind him. PO Cui approached § 87(2)(b) and a physical dispute ensued. As they struggled, PO Hong ran down towards them and assisted PO Cui in apprehending § 87(2)(b) who was still resisting arrest. The officers brought him to the ground in order to handcuff him. § 87(2)(b) did not appear to be injured nor did he request medical attention immediately following the incident.

### Disputed Issues

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

### Assessment of Evidence

§ 87(2)(g) Both he and § 87(2)(b) reported consuming alcohol on the night of the incident and described their state as “buzzed.” Additionally, PO Cui noted on the complaint report that, upon being arrested, § 87(2)(b) told him that he was intoxicated; however, the officers did not describe § 87(2)(b) as intoxicated during their interviews. § 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g) He alleged that PO Cui punched him in the side of the face, which PO Cui’s denied. § 87(2)(g)  
§ 87(2)(g)

Without exception, all statements described § 87(2)(b) as violently and continuously resisting arrest. The medical records reveal that § 87(2)(b) did sustain a fractured elbow. However, it also states that § 87(2)(b) reported that he suffered the injury from being tackled on the ground, which is likely. § 87(2)(g)  
§ 87(2)(g)

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§ 87(2)(g)  
§ 87(2)(g) He did not claim pain or injury to the side of his body and PO Cui and PO Hong denied that § 87(2)(b) was kicked at all. § 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

### Allegation A: PO Benjamin Cui spoke discourteously to § 87(2)(b)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

### Allegation B: PO Benjamin Cui used excessive force against § 87(2)(b)

### Allegation C: PO Steven Hong used excessive force against § 87(2)(b)

Patrol Guide Procedure 203-11 directs officers to use the minimum amount of force necessary to effect the arrest of a resisting person, (enc. 1). § 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: